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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,287	08/20/2003	Yujun Li	AA-544	5788

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EXAMINER	
ANTHONY, JOSEPH DAVID	
ART UNIT	**PAPER NUMBER**
1714	

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/644,287	LI, YUJUN	
	Examiner	Art Unit	
	Joseph D. Anthony	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/14/06*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15 and 23-29* is/are pending in the application.

4a) Of the above claim(s) *23 and 24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15 and 25-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

FINAL REJECTION

Election/Restrictions

1. Newly submitted claims 23-24 are directed to an invention that is independent or distinct from the invention originally claimed because claims 23-24 are drawn to a process for delivering a volatile compound to a surrounding environment whereas the claims examined in the first office action were directed towards an exothermic reaction mixture.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohta et al. U.S. Patent Number 6,180,124.

Ohta et al teach a cosmetic composition comprising (A) a polyhydric alcohol and (B) a finely particulate metal oxide, wherein water is substantially not contained. The cosmetic composition has an optimum viscosity and can be in the form of a gel, undergoes no precipitation of particles, spreads well upon use and

has good easiness of washing off and is hence particularly useful as a massaging cosmetic. The cosmetic composition can contain additional adjuvants such as antiseptics, germicides, vitamins, colorants, perfumes etc. see column 4, lines 53-64.

Ohta et al differs from applicant's claimed invention in the following ways: 1) there is no direct teaching (i.e. by way of an example) to a cosmetic composition that contain a component that falls within applicant's claimed volatile component, and 2) there is not an explicit disclosure to applicant's claimed reaction temperatures parameters. It would have been obvious to one having ordinary skill in the art to use the broad disclosure of the reference as motivation to make compositions that actually contain additional adjuvants such as antiseptics, germicides, perfumes, all of which read on applicant's claimed volatile coating component. Likewise it would have been obvious to add a colorant or an anti-foaming agent to gel compositions in since are suggested by the reference in column 4, lines 53-64. Also note that polyhydric compounds such as propylene glycol in example 3, and 1,3-butanediol in Example 4, can function as anti-foaming agents. It would also have been obvious to one having ordinary skill in the art to use the broad disclosure of the reference as motivation to actually make compositions that meet applicant's claimed reaction temperatures parameters by employing different concentrations of the water soluble carriers and/or binders PEG and/or hydroxypropyl cellulose as set forth in the examples.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-15 and 25-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-6, 8-12, and 19 of copending Application No. 10/341,048. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims overlap the scope of said claims in said copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 1-15 and 25-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 and 19-26 of copending Application No. 10/340,993. Although the conflicting claims are not identical, they

are not patentably distinct from each other because the present claims overlap the scope of said claims in said copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-15 and 25-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 19-24 of copending Application No. 10/341,196. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims overlap the scope of said claims in said copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

8. Applicant's arguments filed 12/14/05 with the amendment have been fully considered but are not persuasive to put the application in condition for allowance for the reasons set forth above. Additional examiner comments are set forth next.

The previously made prior-art rejections over Needleman et al. U.S. Patent Number 5,993,854, WO 99/48469 and Bell et al. U.S. Patent Number 5,935,486 have all been dropped for the reasons of record as set forth by applicant's representative in the "REMARKS" section of the amendment filed 12/14/05.

Only claim 25 remains rejected over prior-art (i.e. Ohta et al. U.S. Patent Number 6,180,124) in the present application for the reasons clearly set forth in the body of the rejection. The examiner must point out that Ohta et al's directly disclosed and suggested zeolites and clay (e.g. kaolin) and silica gel are well known in the art to function as anti-foaming agents even if this function is not explicitly taught by the reference, see column 4, lines 5-38 and the examples. The disclosure of perfumes as an optional adjuvant, is also directly disclosed in column 4, line 62. Finally, applicant's particular claimed reaction parameters in terms of temperature and time, are to be given little patentable weight, since such parameters are really "method of use" limitations that do not inherently limit the nature of the reaction mixture itself which is being claimed. As way of illustration said temperature and time limitations are not just dependent on the exothermic reaction mixture itself, but rather are also inherently dependent on the volume of aqueous solution used into which the exothermic reaction mixture is added. Furthermore, the starting temperature of the aqueous solution used into which the exothermic reaction mixture is added is also an important factor since it would greatly influence the dissolution rate and hence the reaction rate of the exothermic reaction mixture with the aqueous solution.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Examiner Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The centralized FAX machine number is (571) 273-8300. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.

Joseph D. Anthony
Primary Patent Examiner
Art Unit 1714

3/2/06